NO. HHD CV 16-6066527-S	:	SUPERIOR COURT
OLADEJO LAMIKANRA	:	J.D. OF HARTFORD
VS.	:	AT HARTFORD
FOTIS DULOS AND FORE GROUP, INC.	:	JULY 17, 2018
NO. HHD CV 16-6065787-S	:	SUPERIOR COURT
OLADEJO LAMIKANRA	:	J.D. OF HARTFORD
VS.	:	AT HARTFORD
FORE GROUP, INC.	:	JULY 17, 2018

MEMORANDUM OF DECISION

The captioned consolidated lawsuits arise out of a failed residential real estate transaction concerning 585 Deercliff Road, Avon, Connecticut, a property located atop of Avon Mountain. The intended buyer of the property is the plaintiff, Oladejo "Dejo" Lamikanra, a Nigerian national and London, England, resident and an attorney, who entered into a purchase and sale agreement with the intended seller, defendant, Fore Group, Inc. (Fore Group), a Connecticut corporation, and its president, Fotis Dulos. The operative third amended complaint[1] is set forth in five counts: count one - breach of contract as to Fore Group; count two - promissory estoppel (both defendants); count three - CUTPA (both defendants); count four - anti-trust (both

[1] The third amended complaint applies to both lawsuits.

cc: Rptr. Judicial Decisions
7/17/18 alp

defendants); count five - defamation (both defendants) and, count six - breach of the covenant of good faith and fair dealing (both defendants). In response to the complaint, the defendants have asserted two special defenses including statute of frauds and a claim that the contract subject of the plaintiff's complaint has been terminated in accordance with its terms. The defendant, Fore Group, has also filed a counterclaim seeking a release of the deposits paid by the plaintiff in the total amount of $150,000 and attorney's fees and costs.[2]

A court trial was held on August 16, 2017, August 18, 2017, and, after the filing of post-trial briefs, final argument was held on January 19, 2018. The witnesses at trial were the plaintiff, David P. Olson, the real estate agent, and the defendant, Fotis Dulos.

I

FINDINGS OF FACT

Based on the testimony and full exhibits in the case, the court finds the following facts. The plaintiff and Fore Group entered into a purchase and sale contract for 585 Deercliff Road, Avon, Connecticut, on May 27, 2015. The contract provided for a closing date of September 10, 2015. The purchase price was $1,050,000. Initially, the plaintiff made a $50,000 deposit to be applied to the purchase price. Paragraph eight (8) of the agreement provided that "Time is of the

[2] Attorney's fees and costs are sought pursuant to a provision in the underlying purchase and sale agreement. See Plaintiff's Exhibit 2, ¶ 11.

essence as to all provisions of this contract. The plaintiff and Dulos signed the contract. On September 10, 2015, the parties agreed to an addendum (first addendum) to the contract extending the closing date to November 10, 2015. In consideration of the extension of the closing date to November 10, 2015, the plaintiff agreed to pay an additional $100,000 deposit by September 10, 2015. The addendum also provided that the original $50,000 deposit, held by William Raveis, the broker, would be released to Fore Group if the closing did not take place as agreed by November 10, 2015. If the closing did take place by November 10, 2015, the entire $150,000 would be applied to the purchase price. Paragraph 5 of the first addendum provided that "[t]ime shall remain of the essence" and the defendants "are to receive and hold in escrow a termination of the Purchase Agreement that will be effective in the event that the closing does not take place on or before the end of the sixty day extension [November 10, 2015]." The only stipulation noted by the plaintiff was that although termination was to be upon the specific election of Fore Group, the election to terminate was not to be automatic, but to be conveyed in writing by the seller to the buyer by fax or email. Both parties signed the first addendum. The closing did not take place by November 10, 2015.

On November 10, 2015, the parties agree to a second addendum to the purchase and sale contract. The second addendum provided that the $50,000 held in escrow was to be released immediately to the seller by William Raveis. In consideration of the seller's agreement to further

extend the closing date to December 31, 2015, the total deposit of $150,000 was to be nonrefundable. In the event that the plaintiff closed the purchase of the property on or before December 31, 2015, the $150,000 would be applied to purchase price. If the buyer failed to close by December 31, 2015, the seller had the right, at its sole discretion, to terminate the contract and keep the $150,000 deposit as liquidated damages, which the buyer, an attorney, acknowledged to be fair and reasonable. The second addendum also provided that the buyer immediately transfer and pay to the seller an additional $620,000, to be evidenced by a note and a mortgage on the property. If the buyer failed to close by December 31, 2015, the seller could elect to terminate the contract and repay the $620,000 to the buyer. If the closing took place, the $620,000 would be applied to the purchase price.

The second addendum also contained the following provision: "**TIME SHALL BE OF THE ESSENCE AS TO EVERY PROVISION OF THE CONTRACT AND OF THIS MODIFICATION. SELLER'S ATTORNEY SHALL CONTINUE TO HOLD THE TERMINATION PROVIDED BY THE BUYER IN ESCROW AND SELLER SHALL HAVE THE RIGHT TO ELECT TO TERMINATE THE CONTRACT AS PROVIDED HEREIN AND THEREIN.**" (Emphasis in original.) The termination agreement provided by the buyer was to continue to be held in escrow by the seller's attorney and the seller continued to have the right to terminate the agreement. The addendum was signed only by the plaintiff.

Although it contained a provision that it could be executed in counterparts, there is no evidence that a counterpart was signed by Dulos on behalf of Fore Group. Although the plaintiff transferred the $620,000 to the seller's attorney to be held in escrow, Dulos did not execute a note and mortgage and the plaintiff did not inquire about it. Dulos considered the note and the $620,000 to be a proposal which he did not accept. The $620,000 was deposited in escrow with the defendants' legal counsel. It was never released to Dulos.

From November 4, 2015, to December 23, 2015, the plaintiff made no effort to communicate with the defendants concerning the closing status of the property. Dulos tried to call the plaintiff in early December but he "did not pick up." On December 23, 2015, the plaintiff sent a text to Dulos requesting a meeting some time between December 26 and 27, when he planned to be in Avon. He also asked Dulos to submit a bid before the close of business on December 24, 2015. Dulos responded stating that he was in Colorado until December 27, that he had tried to call the plaintiff two weeks prior and requested a conference call, which was subsequently scheduled for December 24. On December 24, the plaintiff stated that he was unable to confirm that he could definitely close by December 31. He also stated that he was prepared to release the $620,000 "hard" to Fore Group by December 31 and suggested a sixty-day extension to close, as the lender he was to meet with agreed in principle but would not commit to a loan by December 31. See Plaintiff's Exhibit 27.

On December 26, the plaintiff wrote to Dulos and asked if he would lend him the $280,000 he needed to close by end of year. Dulos responded on December 27 that he would discuss the proposals and get back to the plaintiff. Id., 5-6. The next time the parties spoke was at a meeting in Dulos' office on December 28. December 28 was a regular work day for Fore Group. The deadline for construction bids on the property had passed and the defendants did not submit a bid. Dulos and his team were justifiably concerned that the plaintiff would be not able to close on the property and they did not think the plaintiff would be able to come up with the $3 million to $4 million it would take the build the house he wanted. Before entering the purchase and sale contract, the parties discussed construction of the house. This was the first time the defendants sold a property without doing the construction on it. Dulos knew that the plaintiff wanted to go through a competitive bidding process. The practice of Fore Group was to submit very detailed line by line bids based on information from its subcontractors, a process that takes three to four weeks. Fore Group did complete a questionnaire concerning the construction early on but this is something that took "ten minutes" to complete. It was a simple questionnaire that the real estate agent filled out. Dulos did not read it. It was not an important document. Dulos agreed to the various addenda because he wanted the deal to work out. On December 28, Dulos informed the plaintiff that he would not submit a bid until they close on the property. The plaintiff conceded that Dulos expressed concern at the December 28 meeting that the plaintiff

would not be able to close on the property. At the meeting, Dulos did not say that he would deliver the termination letter by the December 31, 2015, if there was no closing.

The plaintiff understood December 31 was a firm deadline which is why he flew to Connecticut to meet with Dulos and a prospective lender. At the December 28 meeting, Dulos did not tell the plaintiff that he would extend the deadline beyond December 31. Dulos told him he would bring the plaintiff's proposal for a loan or an extension to his team and get back to him. The next day, December 29, Dulos emailed the plaintiff and informed him that after discussing the matter with his team, he would not extend the closing beyond December 31 and would not loan the plaintiff the $280,000 the plaintiff required to close by December 31. Dulos also stated in the email that Fore Group would consider giving the plaintiff a credit of $150,000 on a future project provided it was on mutually agreeable terms. See Plaintiff's Exhibits 6 and 15. In response, also on December 29, the plaintiff wrote: "As it stands whilst you may of course exercise your rights not to proceed further, I feel certain that if I have 21 days from today, I can close." Plaintiff's Exhibits 7 and 15. On December 31, 2015, Dulos emailed the plaintiff with the September 10, 2015 addendum attached, giving him written notice of termination.

In a letter dated December 31, 2015, the plaintiff's attorney wrote that he considered the "time is of the essence provision" in the September 10, 2015 and November 10, 2015 extensions to be no longer applicable, and that the additional two-week closing date beyond December 31,

2015 requested by the plaintiff was reasonable and would constitute substantial performance. He also stated that it was his position that the last agreed upon closing date was November 10, 2015, "which continues indefinitely until the election of the seller to terminate." Plaintiff's Exhibit 16. In a separate letter, also dated December 31, 2015, the plaintiff's attorney stated that the plaintiff was prepared to close on January 15, 2016 and that the second extension dated November 10, 2015, was a nullity because it was never signed by Fore Group and did not provide the requisite mortgage. In a letter from the plaintiff to Dulos, presumably in response to Dulos' email giving written notice of termination, the plaintiff states that Fore Group is only entitled to the original $50,000 deposit, not $150,000. See Plaintiff's Exhibit 10. The second addendum, dated November 10, 2015, was signed by the plaintiff, and provided, in pertinent part, that the deposit of $50,000 held by William Raveis was to be immediately released to the seller and that the total deposit of $150,000 "shall in no event be refundable to Buyer in consideration of Seller's agreement to further extend the closing date. In the event Buyer closed the purchase of the Property on or before December 31, 2015 the $150,000, shall be applied to the Purchase Price. If the Buyer fails to close, Seller shall have the right at its sole discretion, to terminate the contract and keep the deposit at liquidated damages." Plaintiff's exhibit 12. Aside from the highlighted time is of the essence provision, the remaining provisions of the November 10, 2015 addendum addressed the $620,000 note and mortgage.

In two letters dated December 31, 2015, through counsel, the plaintiff offered to close on January 15, 2016. See Plaintiff's Exhibits 16 and 17. Thereafter, Dulos felt threatened by statements made by the plaintiff in a phone call: "You don't know who I am, you will regret this." Dulos has five young children who reside 500 feet from the subject property. The remarks by the plaintiff caused Dulos to look into the plaintiff's background which turned up unsavory information. Dulos informed key people involved in the transaction via email of what he had learned to deter the plaintiff from acting on the perceived threats. The purported defamatory statement was in the form of an email from Dulos to the plaintiff's attorney, Charlies Houlihan. It stated the following: "I apologize for braking (sic) protocol and contacting you directly. Our contacts overseas have conducted their research and advised us to engage the Federal Bureau of Investigation. We do not take bullying, threats and insults on our integrity lightly." A copy of it was sent to four others including the defendants' attorney, Kent Markowitz, and three others. At trial, various news articles came into evidence indicating that in the past the plaintiff has been accused of committing serious crimes. Articles dating back to 2014 were submitted in evidence by the plaintiff himself. See Plaintiff's Exhibit 25. One article submitted in evidence by the defendants, from a Nigerian news outlet, was posted as recently as June 5, 2017. Defendant's Exhibit A. Although it appears that the plaintiff was subsequently vindicated from the most serious of the accusations, the articles in question are still accessible on the internet.

The plaintiff concedes in his post-trial brief that he was not able to close by December 31, 2015. In fact, the plaintiff's trial testimony and written communications all reflect his understanding that if the closing did not take place on or before December 31, 2015, his right to purchase the property and the full deposit was subject to being forfeited. See Plaintiff's Exhibit 27. Instead, the plaintiff argues that he was ready, willing and able to close two weeks later, on January 15, 2016. The evidence in the trial record submitted by the plaintiff consists of two letters. The first letter, dated January 13, 2016, is from the plaintiff's attorney to the defendants' attorney dated January 13, 2016, stating "that Oladejo Lamikanra is ready, willing and able to close in the purchase and sale agreement on January 15, 2016 as previously indicated." Plaintiff's Exhibit 19. The second letter, dated January 15, 2016, states that the plaintiff is ready, willing and able to close on the property "today," and attaches a letter from an attorney, which purports to be a loan commitment, on the letterhead Suncrest, LLC, 6 Park Place, New Britain, CT 06052. Additional findings of fact may be made as necessary.

II

CONCLUSIONS OF LAW

For the reasons that follows, the court finds that the plaintiff has failed to prove any of his claims by a preponderance of the evidence.

A

Breach of Contract

"The elements of a breach of contract action are the formation of an agreement, performance by one party, breach of the agreement by the other party and damages." (Internal quotation marks omitted.) *Keller* v. *Beckenstein*, 117 Conn. App. 550, 558, 979 A.2d 1055, cert. denied, 294 Conn. 913, 983 A.2d 274 (2009).

There is no evidence that Fore Group, the seller of the property at 585 Deercliff Road, Avon, CT, was not willing, ready and able to sell the property to the plaintiff on or before either September 10, 2015, November 10, 2015, or December 31, 2015, if the plaintiff was ready, willing and able to pay the full purchase price of $1,050,000. Despite the zealous advocacy of the plaintiff's counsel, there is no question that time was of the essence at every step of the transaction. It was never waived by the defendants, and it was consistently acknowledged by the plaintiff in both his testimony and written communications. Although the plaintiff has argued that the closing date was "aspirational," a preponderance of the evidence indicates that it was a clear and definite term of the sales contract and its addenda that time was of the essence. The fact that termination was not automatic and was required to be in writing does not "weaken" it as a required term of the contract. The plaintiff's argument would render "time is of the essence" meaningless as a specific term of a contract. Certainly, it is a term that can be waived; however,

it was not waived in this case. The defendants were under no obligation to bid on the construction of the proposed house for at least two significant reasons. First, most significantly, it was not part of the original contract and was not subsequently added as a term to the contract. Secondly, Dulos acted reasonably when he chose not to submit a bid by the December 24, 2015, deadline because he and his team justifiably had little confidence that the plaintiff had the means to close or would be able to secure the financing to close or complete the project. Because of this lack of confidence, Dulos made a business decision not to commit the time, resources and good will he enjoyed with his subcontractors to complete a bid in his customary manner. Further, the plaintiff had no basis to believe that he could salvage the deal if he failed to close on the property by December 31. The defendants were under no legal obligation to further extend the closing date. The closing was to take place September 10, 2015, then November 10, 2015,[3] and

---

[3] The court finds that the November 10, 2015 agreement was not a nullity. It satisfied the statute of frauds in that it was in writing and signed by the party to be charged, the plaintiff. See General Statutes § 52-550 (a) ("No civil action may be maintained in the following cases unless the agreement, or a memorandum of the agreement, is made in writing and signed by the party, or the agent of the party, to be charged . . . ."); see also *Kasper* v. *Anderson*, 5 Conn. App. 358, 362, 498 A.2d 132, 134, cert. denied, 197 Conn. 818, 501 A.2d 388 (1985) ("In an action to enforce a contract for the sale of real property, the party to be charged, within the meaning of the statute [of frauds], is the party against whom the contract is to be enforced.").

The primary purpose of this second addendum was to extend the closing date until December 31, 2015, in consideration for making the $100,000 additional deposit from the September 10, 2015 addendum, nonrefundable. There is no dispute that the agreed upon deadline per the second addendum was December 31, 2015, and both parties proceeded on that

ultimately December 31, 2015. As the latter date approached and passed, the plaintiff asked for 60 days, then 21 days, and ultimately 15 more days. Had the property closed on December 31, 2015, there is no evidence that Fore Group would not have credited the full deposit of $150,000 to the purchase price. Beyond that date, Dulos was still willing to credit the plaintiff with $150,000 on a future project, although he was under no obligation to do so. Simply stated, the plaintiff utterly and repeatedly failed to meet the terms of the deal that he made with the defendants and thereby breached the purchase and sale contract and each of the addenda.

For these reasons the court finds that the plaintiff has failed to prove by a preponderance of the evidence that the defendants were in breach of their contract. Rather, the court finds in favor of the defendants as to their counterclaim for breach of contract.

---

assumption from November 10, 2015 to December 31, 2015. The paragraphs concerning the $620,000 escrow arrangement with a proposed note and mortgage did not affect the fundamental provisions of the contract. It was an add-on and not a driving force of the need for a second addendum. Rather, it was the extension on the closing date that necessitated the second addendum to further the goal of all concerned to try and save the deal. The plaintiff testified that he did not know that the defendant did not execute the documents until after December 31, 2015. Essentially, it did not matter that the second addendum was not signed by the defendant. Both sides agreed to the terms of that agreement and acted in accordance with them. There was no dispute until the defendants enforced the termination provision that was always in place.

B

Promissory Estoppel

A plaintiff may only recover on a claim of promissory estoppel, if there is no written or express contract between the parties. Breach of contract and promissory estoppel may be pleaded in the alternative but they are inconsistent theories of recovery. "Promissory estoppel is asserted when there is an absence of consideration to support a contract." *Glazer* v. *Dress Barn, Inc.*, 274 Conn. 33, 88, 873 A.2d 929 (2005); see also *Torringford Farms Assn., Inc.* v. *Torrington*, 75 Conn. App. 570, 576, 816 A.2d 736 ("[t]he doctrine of promissory estoppel serves as an alternative basis to enforce a contract in the absence of competing common-law considerations"), cert. denied, 263 Conn. 924, 823 A.2d 1217 (2003), citing *D'Ulisse-Cupo* v. *Board of Directors of Notre Dame High School*, 202 Conn. 206, 213, 520 A.2d 217 (1987); *Stewart* v. *Cendant Mobility Services Corp.*, 267 Conn. 96, 110, 837 A.2d 736 (2003) (concluding that jury reasonably could find that there was no offer for purposes of breach of contract claim but that there was promise for purposes of plaintiff's promissory estoppel claim). In the present case, there is no question that the parties had an express written contract supported by consideration that is clearly identified in both the testimony and exhibits offered by the parties. Thus, the plaintiff has failed to prove that he is entitled to relief based on a theory of promissory estoppel.

C

Connecticut Unfair Trade Practices Act (CUTPA)

General Statutes § 42-110a et seq.

In count three of his complaint, the plaintiff alleges that the defendants committed unfair and deceptive acts or practices in the conduct of its business with the plaintiff, and as a result the plaintiff has suffered an ascertainable loss of money. In order to sustain a claim under CUTPA, the plaintiff must establish that the defendants' conduct meets at least one of the three following criteria: (1) it offends public policy as it has been established by statutes, the common law or other established concept of unfairness; (2) it is immoral, unethical, oppressive or unscrupulous; or (3) it causes substantial injury to consumers, competitors or other business persons. See *Edmands* v. *CUNO, Inc.*, 277 Conn. 425, 450 n.16, 892 A.2d 938 (2006); *Willow Springs Condominium Assn., Inc.* v. *Seventh BRT Development Corp.*, 245 Conn. 1, 43, 717 A.2d 77 (1998); *Fink* v. *Golenbock*, 238 Conn. 183, 215, 680 A.2d 1243 (1996); and *Larsen Chelsey Realty Co.* v. *Larsen*, 232 Conn. 480, 507, 656 A.2d 1009 (1995).

Specifically, the plaintiff alleges that defendants' conduct was "immoral, unethical or unscrupulous because it induced a substantial investment of funds by the Plaintiff without disclosing that it would not consummate the Contract without obtaining the construction contract as well." Third Amended Complaint, ¶ 67. The plaintiff further alleges that the defendants

"engaged in deceit by encouraging and inducing Plaintiff to depart from Connecticut upon a representation that the closing date would be scheduled in 2016 when they did not intend to schedule as represented." Id., ¶ 68. Further, the plaintiff alleges that the defendants sought to secure the construction contract without competitive bidding by terminating the real estate contract after encouraging the plaintiff to return to London instead of obtaining the financing necessary to close on December 31, 2015. See id., ¶ 69. These allegations, however, are simply not supported by the evidence. There is absolutely no evidence that the construction contract was ever part of the sales agreement. In fact, the defendants chose not to bid by the deadline for bidding. The plaintiff repeatedly testified that he wanted the defendants to do the construction and compelling evidence exists that the defendants made a business decision not to bid, even though the plaintiff sought a bid from them after the deadline had passed, because the defendants lost all confidence that the plaintiff had the financial means to close, never mind complete the construction. Finally, there is no evidence that defendants encouraged the plaintiff to return to London instead of obtaining the financing necessary to close on December 31, 2015, as alleged by the plaintiff. In fact, between November 4, 2015 and December 23, 2015, the plaintiff did not communicate at all with the defendants. The plaintiff did not respond to a phone call from Dulos made to him in early December. Nor did the plaintiff attempt to explain his lack of communication in his testimony. The plaintiff waited until December 23, 2015 to text Dulos and

then requested a meeting "sometime between December 26 and 27, 2015." In a telephone call on December 24, 2015, all the plaintiff stated was that he was unable to confirm that he could close by December 31. The plaintiff then offered to release the $620,000 being held in escrow to the defendants by December 31, as consideration for an additional sixty-day extension. As this third deadline loomed, the plaintiff's failure to demonstrate that he had the wherewithal to close the deal, and his lack of communication with the defendants in the weeks leading up to the deadline, did little to generate confidence in his reliability and capability to complete this task. These allegations and subsequent arguments in support of them in the plaintiff's post-trial brief, cross-examination of Dulos, and closing argument, are more in the nature of wild accusations and, in light of all the evidence presented, lack substance and credibility. For these reasons, the court finds that the plaintiff has utterly failed to prove anything resembling a CUTPA claim.

D

Connecticut Antitrust Act

General Statutes § 35-24 et seq.

In count four of his complaint, the plaintiff alleges that the defendants illegally tied the sale of the property to the plaintiff's acceptance of their construction services, "contrary to the vigorously negotiated terms of the Contract and the bidding process established by Plaintiff. When Plaintiff refused to open the sealed bids of competitors so that Defendants would be able

to make the lowest bid, Defendants terminated the Contract." Third Amended Complaint, ¶ 78. The plaintiff further alleges that the "Defendants entered into a combination or conspiracy to cause Plaintiff to refuse to deal with the other bidding contractors or to coerce, persuade and induce Plaintiff to refuse to deal with the other contractors, the purpose or effect of which is to restrain trade or commerce in violation of Conn. Gen. Stat. Ann. §35-28." Id., ¶ 80. Further, the plaintiff alleges that, "Defendants engaged in an illegal tying transaction by tying Plaintiff's right to purchase the Property to Plaintiff's agreement to provide the Fore Group with the construction contract for the improvements." Id., ¶ 81. The plaintiff requested injunctive relief, actual and treble damages, attorney's fees and costs for these alleged violations. Essentially, the plaintiff alleges that the defendants terminated the purchase and sales contract with the plaintiff because the plaintiff refused to open the sealed bids of competitors in the defendants' presence at their meeting on December 28, 2015, so the defendants could become the lowest bidder on the house the plaintiff wished to build on the property.

For several of the reasons previously stated in connection with the breach of contract claim (count one), the far more credible evidence reveals that the construction portion of the plaintiff's plans for the property at 585 Deercliff Road, may have been discussed between the parties but was never part of their contract or their negotiations concerning the purchase and sale of the real property. In fact, the defendants chose not to submit a bid by the deadline set by the

plaintiff. The defendants had no intention of submitting a bid until and unless there was a closing on the property. There is absolutely no evidence that the defendants threatened or sought to coerce the plaintiff in anyway. Rather, the facts revealed by the evidence demonstrate a total failure by the plaintiff to follow through on his side of the bargain and consummate a purchase of the property as promised. The court notes that the plaintiff's briefing on his antitrust claim is minimal, conclusory, and simply not borne out by any credible evidence.

In construing the Connecticut Antitrust Act, General Statutes § 35-44b provides that, "the courts of this state shall be guided by interpretations given by the federal courts to federal antitrust statutes." The federal courts, including the United States Supreme Court, have repeatedly stated that conclusory allegations are insufficient to support an antitrust claim. See *Bridgeport Harbour Place I, LLC* v. *Ganim*, 303 Conn. 205, 213-14, 32 A.3d 296 (2011). In the present case, the plaintiff's arguments are based on speculation and contain no references to actual evidence before the court.[4] For this reason, the plaintiff has failed to prove that any actions of the defendants, at any time in the course of their contract with the plaintiff, were even remotely related to a violation of the Connecticut Antitrust Act.

---

[4] The court notes that although the plaintiff alleges notice to the Attorney General and the Commissioner of Consumer Protection in connection with his CUTPA claim, pursuant to General Statutes § 42-110g (c), he has failed to alleged that he met the similar requirement under the Antitrust Act to simultaneously mail a copy of his complaint, upon filing, to the Attorney General, as required by General Statutes § 35-37.

E

Defamation

In count five of his complaint, the plaintiff alleges, in pertinent part, that the plaintiff is an attorney in England and Nigeria and the defamatory remark charges "improper conduct or lack of integrity in Plaintiff's profession." Third Amended Complaint, ¶ 91. The complaint also alleges that the communication in question "stated that Defendants had conducted an investigation, the results of which indicated criminal activities by Plaintiff that should be reported to the United States Federal Bureau of Investigation for investigation and prosecution." Id., ¶ 92. The complaint further alleges that the communication concerned the plaintiff, was false and defamatory, and the defendants knew it to be false when it was made. Id., ¶¶ 94-97.

"A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him . . . ." (Internal quotation marks omitted.) *Gleason* v. *Smolinski*, 319 Conn. 394, 431, 125 A.3d 920 (2015). "[T]o establish a prima facie case of defamation, the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement." (Internal quotation marks omitted.) Id., 430. "Slander is oral defamation." (Internal

quotation marks omitted.) *Mercer* v. *Cosley*, 110 Conn. App. 283, 297, 955 A.2d 550 (2008). "Slander is actionable per se if it charges incompetence or dishonesty in office . . . ." *Miles* v. *Perry*, 11 Conn. App. 584, 602, 529 A.2d 199 (1987). "When the defamatory words are actionable per se, the law conclusively presumes the existence of injury to the plaintiff's reputation." (Internal quotation marks omitted.) *Lowe* v. *Shelton*, 83 Conn. App. 750, 766, 851 A.2d 1183, cert. denied, 271 Conn. 915, 859 A.2d 568 (2004). "Additionally, to recover punitive damages, a plaintiff must prove actual malice, regardless of whether the plaintiff is a public figure." *Gambardella* v. *Apple Health Care, Inc.*, 291 Conn. 620, 628, 969 A.2d 736 (2009). "[F]or a claim of defamation to be actionable, the statement must be false . . . and under the common law, truth is an affirmative defense to defamation . . . the determination of the truthfulness of a statement is a question of fact . . . ." (Internal quotation marks omitted.) *Gleason* v. *Smolinski*, supra, 319 Conn. 431.

As previously mentioned, the court found the following facts relevant to the plaintiff's claim of defamation. After Dulos notified the plaintiff of the defendants' intent to terminate the contract, Dulos felt threatened by a statement made by the plaintiff in a telephone call quoted by Dulos as follows: "You don't know who I am, you will regret this." Dulos has five young children who reside 500 feet from the subject property. The remarks by the plaintiff caused Dulos to look into the plaintiff's background which turned up unsavory information including

allegations of fraud, forgery, extortion, domestic violence, and professional misconduct. Dulos informed key people involved in the attempted purchase and sale of 585 Deercliff Road via email of what he had learned to deter the plaintiff from acting on the perceived threats. The purported defamatory statement was in the form of an email from Dulos to the plaintiff's attorney, Charlies Houlihan. It stated the following: "I apologize for braking (sic) protocol and contacting you directly. Our contacts overseas have conducted their research and advised us to engage the Federal Bureau of Investigation. We do not take bullying, threats and insults on our integrity lightly." A copy of the email was also sent to the defendants' attorney Kent Markowitz, and three others.[5] At trial, various news articles came into evidence indicating that in the past the plaintiff had been accused of committing serious crimes. Articles dating back to 2014 were submitted in evidence by the plaintiff himself. See Plaintiff's Exhibit 25. One article submitted in evidence by the defendants, from a Nigerian news outlet, was posted as recently as June 5, 2017. See Defendants' Exhibit A. Although it appears that the plaintiff was subsequently vindicated from the most serious of the accusations, the articles in question are still accessible on the internet.

For the following reasons, the court finds that the plaintiff has failed to prove his claim of

---

[5] The individuals copied on the email were Steffen Reich, David Olsen, and PJ Lewis, all three involved one way or another with the failed real estate transaction.

defamation by a preponderance of the evidence. The only arguably defamatory portion of Dulos' email is that it suggested that the plaintiff threatened him in some way. First, while Dulos did not specify the precise threat he attributes to the plaintiff in the email, he did testify that the statement that he perceived as a threat was: "You don't know who I am, you will regret this." Dulos quoted this remark in the course of cross-examination by the plaintiff's attorney. The plaintiff did not attempt to deny or otherwise contextualize it by way of rebuttal. For this reason, the more persuasive and credible evidence on this subject was presented by Dulos. Thus, the court finds that the statement made by Dulos in the email is true. As stated, truth is an affirmative defense to defamation. Additionally, Dulos' statement stated that the defendants have done research and that one or more unidentified persons advised the defendants to contact the FBI, is not a defamatory statement.

F

Breach of the Covenant of Good Faith and Fair Dealing

In the sixth count of the operative complaint, the plaintiff alleges that the defendants violated the implied covenant of good faith and fair dealing. As to this claim, the plaintiff specifically alleges the following: "By reason of their long negotiations and the known reliance of Plaintiff upon the representations of Defendants, Defendants owed Plaintiff a duty of good faith and fair dealing." Third Amended Complaint, ¶ 104. "Defendants breached their duty of good faith and fair dealing." Id., ¶ 105. "Plaintiff sustained actual damages by reason of

Defendants' breach of their duty of good faith and fair dealing." Id., ¶ 106. "Defendants acted knowingly, intentionally and/or recklessly and thereby entitle Plaintiff to recover punitive damages." ¶ 107.

"It is axiomatic that the . . . duty of good faith and fair dealing is a covenant implied into a contract or a contractual relationship." (Internal quotation marks omitted.) *De La Concha of Hartford, Inc.* v. *Aetna Life Ins. Co.*, 269 Conn. 424, 432, 849 A.2d 382 (2004); see also *Magnan* v. *Anaconda Industries, Inc.*, 193 Conn. 558, 566, 479 A.2d 781 (1984); 2 Restatement (Second), Contracts § 205 (1979) ("[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement"). "[E]very contract carries an implied duty requiring that neither party do anything that will injure the right of the other to receive the benefits of the agreement." (Internal quotation marks omitted.) *Renaissance Management Co.* v. *Connecticut Housing Financial Authority*, 281 Conn. 227, 240, 915 A.2d 290 (2007).

"To constitute a breach of [the implied covenant of good faith and fair dealing], the acts by which a defendant allegedly impedes the plaintiff's right to receive benefits that he or she reasonably expected to receive under the contract must have been taken in bad faith." *Alexandru* v. *Strong*, 81 Conn. App. 68, 80-81, 837 A.2d 875, cert. denied, 268 Conn. 906, 845 A.2d 406 (2004), citing *Gupta* v. *New Britain General Hospital*, 239 Conn. 574, 598, 687 A.2d 111 (1996). "Bad faith in general implies both actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not

prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. . . . Bad faith means more than mere negligence; it involves *a dishonest purpose*." (Citation omitted; emphasis added; internal quotation marks omitted.) *Habetz* v. *Condon*, 224 Conn. 231, 237, 618 A.2d 501 (1992). "Absent allegations and evidence of a dishonest purpose or sinister motive, a claim for breach of the implied covenant of good faith and fair dealing is legally insufficient." *Alexandru* v. *Strong*, supra, 81 Conn. App. 81.

In the present case, the plaintiff failed to prove that the defendants did anything other than enforce their rights under the contract. Although the plaintiff's arguments suggest that the defendants pulled a fast one on the plaintiff by terminating the contract on two days notice, nothing could be further from the truth. In fact, the plaintiff had several months notice that if he failed to perform as promised, he stood to forfeit his deposits. The plaintiff acknowledged in his testimony that if he was not able to close by the applicable agreed upon deadline, all the defendants had to do was notify him of their intent to terminate in writing by email or fax. The plaintiff also acknowledged this in an email as late as December 29, 2015, in response to Dulos' email informing the plaintiff that the defendants decided not to extend the closing by sixty days or lend him the $280,000 he needed to close. In a reply, the plaintiff stated: "*As it stands whilst you may of course exercise your rights not to proceed further,* I feel certain that if I have 21 days from today, I can close." (Emphasis added.) Plaintiff's Exhibit 7. Justifiably exercising contract rights pursuant to undisputed terms of the contract is not unreasonable; nor can it be said to constitute bad faith. Because there is no evidence that the defendants acted dishonestly,

deceptively or refused to fulfill some contractual obligation, the plaintiff has also failed to prove his claim of breach of the implied covenant of good faith and fair dealing.

CONCLUSION

Accordingly, for all the foregoing reasons, the court hereby enters judgment in favor of the defendants on the plaintiff's complaint and on their counterclaim for breach of contract. The defendants may file a motion for attorney's fees and costs in accordance with the terms of their purchase and sale contract; Plaintiff's Exhibit 2; and Practice Book § 11-21.

PECK, JTR

CHECKLIST FOR CLERK

Docket Number HHD CV 16-6066527-S

Case Name Oladejo Lamikanra v. Fotis Dulos and Fore Group, Inc.

Memorandum of Decision dated 7-17-18

File Sealed: yes_____ no X

Memo Sealed: yes_____ no X

This memorandum of Decision may be released to the Reporter of Judicial Decisions for publication. X

This Memorandum of Decision may NOT be released to the Reporter of Judicial Decisions for publication. _____

State of Connecticut Judicial Branch
Superior Court Case Look-up

Superior Court Case Look-up
Civil/Family
Housing
Small Claims

Attorney/Firm Juris Number Look-up

Case Look-up
By Party Name
By Docket Number
By Attorney/Firm Juris Number
By Property Address

Short Calendar Look-up
By Court Location
By Attorney/Firm Juris Number
Motion to Seal or Close
Calendar Notices

Court Events Look-up
By Date
By Docket Number
By Attorney/Firm Juris Number

Pending Foreclosure Sales

Understanding
Display of Case Information

Contact Us

Comments

HHD-CV16-6066527-S LAMIKANRA, OLADEJO v. DULOS, FOTIS Et Al

Prefix: HD1 **Case Type:** T90 **File Date:** 03/02/2016 **Return Date:** 03/22/2016

Case Detail | Notices | History | Scheduled Court Dates | E-Services Login | Screen Section Help

To receive an email when there is activity on this case, click here.

This case is consolidated with one or more cases

Information Updated as of: 07/17/2018

Case Information

Case Type: T90 - Torts - All other
Court Location: HARTFORD JD
List Type: No List Type
Trial List Claim:
Last Action Date: 06/26/2018 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party		No Fee Party	Category
P-01	OLADEJO LAMIKANRA		Plaintiff
	Attorney: CHARLES HOULIHAN JR (408495) File Date: 03/02/2016 75 WEST ST. P. O. BOX 582 SIMSBURY, CT 060700582		
D-01	FOTIS DULOS		Defendant
	Attorney: MARKOWITZ & MAWHINNEY PC (422454) File Date: 03/03/2016 34 JEROME AVE SUITE 108 BLOOMFIELD, CT 06002		
D-02	FORE GROUP, INC.		Defendant
	Attorney: MARKOWITZ & MAWHINNEY PC (422454) File Date: 03/03/2016 34 JEROME AVE SUITE 108 BLOOMFIELD, CT 06002		

Viewing Documents on Civil, Housing and Small Claims Cases:

If there is an in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.* For more information on what you can view in all cases, view the Electronic Access to Court Documents Quick Card.
- For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the **Notices** tab above and selecting the link.*
- Documents, court orders and judicial notices in an electronic (paperless) file can be viewed at any judicial district courthouse during normal business hours.*
- Pleadings or other documents that are not electronic (paperless) can be viewed only during normal business hours at the Clerk's Office in the Judicial District where the case is located.*